

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

-----X

BABY DOE, A CITIZEN OF AFGHANISTAN	:	
CURRENTLY RESIDING IN NORTH	:	
CAROLINA, BY AND THROUGH NEXT	:	CIVIL ACTION NO. 3:22-CV-49
FRIENDS, JOHN AND JANE DOE; AND JOHN	:	
AND JANE DOE, CITIZENS OF AFGHANISTAN:	:	
AND LEGAL GUARDIANS OF BABY DOE,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
JOSHUA MAST, STEPHANIE MAST, RICHARD	:	
MAST, KIMBERLEY MOTLEY, AND AHMAD	:	
OSMANI,	:	
	:	
Defendants,	:	
	:	
and	:	
	:	
UNITED STATES SECRETARY OF STATE	:	
ANTONY BLINKEN AND UNITED STATES	:	
SECRETARY OF DEFENSE GENERAL	:	
LLOYD AUSTIN,	:	
	:	
Nominal Defendants.	:	

-----X

PLAINTIFFS' OPPOSITION TO CALEB MAST'S MOTION TO QUASH SUBPOENA

Caleb Mast (“Mast”), who is the brother of Defendants Joshua and Richard Mast, moves to quash a subpoena served on someone else—Liberty University. ECF Nos. 196, 197. The motion seeks to allow Liberty University to withhold from its response to the subpoena a single email from Mast to an unidentified former Muslim and now Christian pastor (the “Pastor”) and the Pastor’s reply (the “Email”). Mast asserts that “disclosure” of the Email would “create a risk of

harm” to the Pastor, would violate Mast’s and the Pastor’s First Amendment “right to freedom of association,” and would “violate [their] rights under the Religious Freedom Restoration Act.” ECF No. 197 at 3.

Mast’s motion should be denied, for several reasons.

First, Liberty University has advised that it already produced the Email (and other documents) to Plaintiffs’ counsel in response to a subpoena in the state circuit court proceeding. *See* Exh. 1 (stating that Liberty University is producing in this matter communications “previously produced in the related state case (CL22000186-0) with the exception of one email with Caleb Mast which may be subject to the Motion to Quash”). Perhaps Mast was unaware of that inconvenient fact.

Second, Mast seems to assume that mere production of the Email in discovery would somehow be unfettered “disclosure” to the world. Had Mast’s counsel reached out to counsel for Plaintiffs before filing his motion, he would have been assured that Plaintiffs would treat the email as “CONFIDENTIAL” per the protective order that Plaintiffs have asked the Court to approve. *See* Plaintiffs’ Motion, And Memorandum In Support Of Motion, For The Entry Of Proposed Protective Order (ECF No. 166). Indeed, that is how the Email has been treated in the circuit court litigation regarding the fraudulent (and now vacated) adoption order.

Third, Mast also would have learned that Plaintiffs would have no objection to Liberty University redacting the Pastor’s name, provided there are no other redactions. Apparently, Mast appreciates the utility of redaction in these circumstances: “At the least, the email should be produced only in a redacted format to protect the pastor from being identified.” ECF No. 197 at 5. Why he did not ask Liberty University to raise this with Plaintiffs’ counsel is a mystery. In any

event, Plaintiffs remain willing to agree to these safeguards, so that should be the end of this tempest in a teapot.¹

Fourth, Mast should not be heard to speak on behalf of the Pastor. If the Pastor's safety were to be genuinely at risk, one might have expected a sworn declaration from him (submitted under seal). Instead, all we have are Mast's conclusory assertions that, for example, "the identity of the [P]astor . . . should not be disclosed to protect him from threat to his life." ECF No. 197 at 4.

Finally, Mast's motion should be denied for the additional reasons that neither the First Amendment nor the Religious Freedom Restoration Act (the "RFRA") has any application here. Mast claims that the Pastor "is from a nation-state controlled by Muslim extremists," and that disclosure of his identity "will create a risk to [him] for being associated in any way with an American couple of the Christian faith adopting an Afghan child born to a family of the Muslim faith." *Id.* at 2.² Later in his Memorandum, Mast asserts that the Email "explicitly identifies the congregation and ministry with which the pastor is associated." *Id.* at 6. He goes on to argue that: "**Forcing him** to disclose communications that he has had with his (former) pastor would necessarily require disclosure [of] the nature of the[ir] association and activities associated with the pastor and his congregation/ministry." *Id.* (emphasis added). And that it would "substantially burden [Mast's] exercise of religion." *Id.* at 8. As noted, the subpoena does not force Mast to disclose anything. More to the point, as also noted, production in discovery is hardly the same as disclosure on the Internet. In any event, Plaintiffs' agreement that Liberty University may redact

¹ Mast also asserts, without elaboration, that the Email "is irrelevant to any claim or defense in this action." ECF No. 197 at 5.

² Plaintiffs were pleasantly surprised to read that at least one Mast admits that Baby Doe is Afghan and not a "stateless minor."

the Pastor's name and that they will treat the Email as "CONFIDENTIAL" obviates any First Amendment or RFRA concerns, however fanciful they may be.

Accordingly, Mast's motion should be denied.

Date: April 11, 2023

Respectfully Submitted,

/s/ Maya Eckstein

Maya M. Eckstein (VSB No. 41413)
Lewis F. Powell III (VSB No. 18266)
HUNTON ANDREWS KURTH LLP
951 E Byrd Street
Richmond, VA 23219
Telephone: (804) 788-8200
Fax: (804) 788-8218
Email: meckstein@HuntonAK.com
Email: lpowell@HuntonAK.com

Jeremy C. King (*admitted pro hac vice*)
HUNTON ANDREWS KURTH LLP
200 Park Avenue
New York, NY 10166
Telephone: (212) 309-1000
Fax: (212) 309-1100
Email: jking@HuntonAK.com

Sehla Ashai (*admitted pro hac vice*)
ELBIALLY LAW, PLLC
704 East 15th Street
Suite 204
Plano, TX 75074
Telephone: (312) 659-0154
Email: ashai@elbiallylaw.com

Blair Connelly (*admitted pro hac vice*)
Zachary Rowen (*admitted pro hac vice*)
LATHAM & WATKINS LLP
1271 Avenue of the Americans
New York, NY 10029
Telephone: (212) 906-1200
Email: blair.connelly@lw.com
Email: Zachary.rowen@lw.com

Damon Porter (*admitted pro hac vice*)
Ehson Kashfipour (*admitted pro hac vice*)
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004-1304
Telephone: (202) 637-2001
Email: damon.porter@lw.com
Email: ehson.kashfipour@lw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of April 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to all CM/ECF participants.

By: /s/ Maya M. Eckstein
Maya M. Eckstein (VSB # 41413)
Hunton Andrews Kurth LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
meckstein@HuntonAK.com

Counsel for Plaintiffs